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ABSTRACT

This unit presents information on Native American treaties as a basis for rational thought on current controversies over these treaties' status. The unit contains three sections with five lesson plans each. Each lesson includes student material, goals, vocabulary, and questions for discussion. Section 1 covers (1) the purposes of government, and the type of government and its formation in the United States; (2) the nature and enforcement of the Constitution; (3) federalism and the distribution of political power; (4) cultural pluralism; and (5) a simulation game elucidating the conflict between private property and public necessity. Section 2 explains (1) what treaties are and how they are made; (2) background on Indian treaties; (3) treaty enforcement and change; (4) the future of Indian treaties; and (5) a simulation game clarifying the problems and frustrations of cross-cultural negotiation. Section 3 discusses the Indian fishing rights controversy, particularly with regard to the Northwest salmon fishing industry, and includes a simulation game pitting salmon fishermen against the state Department of Fisheries. Appendices include Article I, Section 8 of the U.S. Constitution, the Treaty of Paris (1783) between the United States and Great Britain, the Treaty of Medicine Creek (1854) between the United States and nine Northwest tribes, and illustrations of salmon fishing gear in Puget Sound. (SV)

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Understanding Indian Treaties as Law

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UNDERSTANDING INDIAN TREATIES AS LAW

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Understanding Indian Treaties as Law

-A Northwest Perspective-

Introduction

Educational programs focusing on Native American treaties are controversial. At the same time controversial materials satisfy a fundamental requirement of relevance. Most citizens of the United States today have opinions about the current status of those treaties. Some of those opinions are informed, but a great many are emotional with little foundation in fact.

Four hundred treaties were negotiated with the Native American Nations during the treaty making years that ended in 1871. The primary objective of this unit is to bring information and rational thought to the Native American treaty issue.

The format presents student materials on one side of the lesson and a suggested lesson plan on the reverse side. You might want to reproduce one classroom set to be collected at the close of the period. The teacher might consider reading some of the selections in the interest of saving paper. In that event, a careful presentation with clarification of significant data is important. The student materials were kept brief to deal only with the essence of the learning. It is expected that the teacher will want to expand on each lesson.

The Basic Knowledge Expectations are an attempt to identify the "critical" or long lasting learnings for the student. These are to be viewed as minimal expectations and there are many ways to extend the evaluation of the student's comprehension of those fundamentals. It is the intent of the curriculum committee to make it possible for every student to be a winner.

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BASIC KNOWLEDGE EXPECTATIONS

1. What is the difference between a democracy and a republic?

In a democracy, all of the people get together to make decisions. In a republic, decisions are made by representatives of the people.

2. What is the United States Constitution?

The Constitution is an agreement among the people and states of the United States describing the powers of government and the rights of the people. It is a "compact," which means it cannot be broken or changed except by the consent of the people.

3. How are the powers of the federal government limited?

The powers delegated to the federal government by the states are enumerated in the Constitution. All other powers are reserved by the states and the people.

4. What does federalism mean?

Federalism is a sharing of powers between a national government and local governments. In the United States, it is a sharing between the federal government, and state, territorial and other local governments.

5. Who decides whether the federal government's actions are legal?

Federal courts may declare actions of the government unconstitutional. If elected officials refuse to obey the courts, they can be impeached by Congress.

6. What is a treaty?

A treaty is an agreement between two nations, made by their representatives. In the United States the President makes treaties, with the approval of two-thirds of the Senate.

7. What is a treaty's place in United States law?

Treaties with the United States have the same force as laws made by Congress, and, like federal laws, can be enforced by the federal courts.

8. How are Indian treaties different from other United States treaties?

Like the Constitution, Indian treaties include agreements for sharing powers and describe a permanent and limited joining of governments.

9. Why must Indian tribes be compensated for changes in their treaties?

Under the Fifth Amendment to the Constitution, owners of property taken for public use must be compensated. When Congress changes a treaty in such a

way that tribal property is taken away, the taking must be compensated the same as any other taking of property.

10. How are tribes similar to states?

Like states, tribes make and enforce laws, raise taxes and provide services for their citizens, all subject to the Constitution, federal law, and treaties.

11. Who generally makes property laws? Why?

In the United States both the national government and local governments make laws regulating the ownership, use, and sale of property. Laws encourage people to use property wisely and fully when property owners enjoy all the benefits--and bear all the costs--of their property.

12. How and why do we regulate salmon fishing?

Under Washington state law no one owns a salmon until it has been caught. To keep people from catching too many salmon and endangering their survival, the state limits where and when people can fish, what gear they can fish with, and, since 1976, how many people can fish.

13. How did U.S. v. Washington change Indian and non-Indian salmon fishing in Washington?

In U.S. v. Washington a federal court decided that treaties with Puget Sound and Columbia River Indian tribes promised them an opportunity to catch at least half of the harvestable salmon returning each year to their "usual and accustomed" fishing grounds. Tribes had been catching much less than half, so the court ordered the state to give tribal members more fishing time than other fishermen.

DESERT ISLAND: GENERAL INSTRUCTIONS

Object of Play

1. You are all stranded on a desert island. Your only food is coconuts, and coconut trees are hard to find. Every day you explore the island, individually, trying to find enough coconuts to eat.

2. Each of you must have five coconuts every day to survive.

3. There are some native people on the next island, close enough to swim there. They have a boat they will sell for 100 coconuts. It can carry six people at a time to safety, or five, if one person sails it back and forth.

4. The object of the game is to get off the desert island alive. Anyone who runs out of coconuts, or is left on the desert island with no means of escape at the end of the game, loses.

Coconuts

1. There are plenty of coconuts on the island, but because they are scattered around and there are only a few coconuts on each tree, it's just a matter of chance how many each of you find each day.

2. At the beginning of each "day" or round of DESERT ISLAND the teacher will deal each of you a "coconut card." It will show you how many coconuts you found that day. You can save your coconut cards, keeping coconuts from one day to eat another day.

3. Several students can pool their coconut cards together. Coconut cards can also be stolen.

4. At the end of each round the teacher will collect five coconuts from each student (either by taking a 5-coconut card or by marking down a larger card). Any student who can't come up with five coconuts is out of the game.

Escape by boat

1. The teacher or a student helper will represent the natives on the next island. Their boat cannot be stolen or taken by force. It can only be obtained by paying its owners 100 coconuts in whatever form they demand through their representative.

2. Students can make any arrangement they choose to pool coconuts.

3. If obtained, the boat can make one round trip to safety each "day" or round of the game. If it returns to pick up more passengers, one student must return with it to sail it back.

DESERT ISLAND

A Game of Survival Through Collective Action

It's easy to say that governments exist to pool citizens' resources and efforts for their benefit, but it's sometimes hard, in our complicated world, to appreciate just how important that part of government can be.

DESERT ISLAND is a game involving a much simpler world and a single, clearcut problem: survival. Students playing DESERT ISLAND will have to combine their efforts and make some very hard choices about individual rights and responsibilities, if any of them are to "win".

The basic theme in DESERT ISLAND is the unavoidable conflict in every society between private property and public necessity. As DESERT ISLAND illustrates, even the simplest society must set up institutions to deal with this conflict.

Unlike the other games in this unit, DESERT ISLAND requires no preliminary discussion, other than an explanation of the rules. Several discussion questions are, however, especially useful in "debriefing" and are included at the end of this game.

DESERT ISLAND: SPECIAL INSTRUCTIONS FOR TEACHERS

Preparation

1. You will find in this packet a sheet of "coconut cards" in denominations from 0 to 25 coconuts. Make as many copies of this sheet as you have students in your class playing DESERT ISLAND, cut the individual cards apart, and shuffle them thoroughly.

2. Describe DESERT ISLAND to your class the class day before you play it. You may find it helpful to appoint a student helper.

3. Just before your class meets to play DESERT ISLAND clear your classroom as much as possible so that there is plenty of room to move around.

Beginning play

1. Break the class hour up into DESERT ISLAND "days" or round of ten minutes or so.

2. At the beginning of each round, deal one coconut card to each student. You need not, at this time, check to see how many coconuts each student has.

3. Students have the whole round to make arrangements for pooling or even stealing coconut cards. Any arrangement is as good as students' ability to enforce it themselves without your help. (CAUTION: do not encourage or condone the use of much more than symbolic coercion to enforce arrangements!)

4. It is permissable for students to arrange for one of them to get the coconut cards for all of them.

Scoring

1. At the end of each round, you must get five coconuts from each student. If a student can't give you five coconuts he is out of the game.

2. Take a five-coconut card if the student has one; otherwise, mark a 10-, 15-, 20- or 25-coconut card clearly in ink with the words "less five" or "minus five."

3. Destroy all of the cards you have collected. Do not return them to the shuffled deck of coconut cards or leave them around where some enterprising and "hungry" student may find them.

4. If all or some group of students "buys" the boat from you, they must choose who will sail away first. Have these students leave the room; they have all "won". At the beginning of the *next round*, go out and see if any of these "escaped" students is ready to sail back into the room to pick up five more. If not, the game is over and all students left behind have lost.

5. If the boat has been obtained and an arrangement has been made among the students to sail it back and forth, but for lack of time, the game ends before everyone is off the island, the whole class must decide whether, had the game continued, the people in the boat would have taken it back for more passengers. If yes, those people left behind at the end of the game are winners just as if they had escaped. If no, they all lose.

0	0	0	0
5	5	5	5
10	10	10	10
15	20	20	25

DESERT ISLAND: DEBRIEFING QUESTIONS

1. Did anyone ever "own" any of the coconuts?

2. What is the difference between "possession" and "ownership"?

3. How were students' claims to coconuts protected (if at all)?

4. What happened when students broke their agreements with one another?

5. Were students reluctant to pool their coconuts together even though it was their only hope of escape? Why?

6. Suppose one student had the power to "tax" everyone's coconuts to pay for the boat. Should the students with the most coconuts pay the largest tax?

7. Suppose everyone got together and bought the boat. How could the students left behind on the first trip make sure that the boat would make the trip back for them?

8. Which students made out best? Why?

..... 1. WHY GOVERNMENT?

Men being... by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent. The only way whereby any one divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another.

John Locke's Second Treatise of Government (1690)

Government

Government is the means by which we make and carry out collective decisions--decisions which benefit most of us but which no single individual has the means to carry out. All of us are partly responsible for the decision and all of us are partly responsible for making it work. A government is only as strong as its citizens' willingness to participate in it and obey its commands.

What are the purposes of government?

A government that truly represents the people and their wishes will devote itself to increasing their well-being--protecting their lives and property and securing them opportunities for achieving their personal goals. Of course, no government can secure to all of its citizens all of their desires. We differ in our personal needs, resources, and hopes. Almost anything we do as a group will displease, even injure some of us. Democratic governments are therefore ruled by compromise, acting only when the greatest number of citizens expect some good to come from the action.

What kind of government is the United States?

The people themselves have the greatest control over their future when they all participate directly in decisionmaking and vote, as a body, on all issues. This kind of "true democracy" is difficult to practice when large numbers of citizens are dispersed over a large territory, and when there are many decisions to be made. As societies grow larger it becomes harder for everyone to meet together directly and in person. The next best thing is a "republic"--a government in which the daily business of decisionmaking is in the hands of a small number of citizens, selected by and representing the variety of interests of the whole population.

How are governments formed?

Our Declaration of Independence expresses a belief that a lawful government must arise from the consent of the governed, not by force or by military conquests. A government once created remains a government until its own citizens choose to design a new one or leave it to join others.

I. GOVERNMENT

.....1. Why Government

Goals:

The student:

1. knows why government is important to us.
2. knows difference between a republic and a democracy.
3. knows that democratically operated governments can only make decisions through a process of compromise.

Vocabulary:

collective decisions
compromise

Debriefing questions:

1. What is government?
2. Why do we have government?
3. Define freedom.
4. How would people behave in absolute freedom?
5. Do our people in the U.S. have enough freedom? (Push for explanations and examples)
6. List the following services on the board then have each student determine how many of each of their $100 in taxes they would assign to each service. Share lists and explanations. (new park, more police, new gym, welfare, health clinic, library addition, symphony orchestra, new art pieces, small business loans).
7. Justice Holmes said, "With taxes I buy civilization." What did he mean?
8. Explain the importance of the statement in the lesson, "Democratic governments are therefore ruled by compromise,..."

Brainstorm separately:

a. Services provided by Federal government.
b. Services provided by State government.
c. Services provided by City government.

..... 2. CONSTITUTIONAL GOVERNMENT

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

The Declaration of Independence (1776)

Constitution

The constitution of a government is the description of how it works--who does what, who is responsible to whom, and how decisions are to be made. Every government has a constitution, but some are written down in one place, some are the result of an accumulation of different rules made at different times, and some exist only in memories and traditions. Some are made and changed by the government itself, while others subject to change by the people alone.

Why a written constitution?

In the United States the national, state, territorial, tribal and municipal constitutions are written down, each as a unique document. A single written document is often easier to agree on and interpret than custom. It can be distributed to everyone, serving as a plain guide to the operation of government and the rights of citizens. Written constitutions also reflect the idea that the structure of government is the result of a specific agreement or contract among the people. Like any other contract, the contract of government is limited to its written terms.

What are delegated and enumerated powers?

Like a contract, the United States Constitution is limited to its exact terms. The powers of the government are *delegated* in the sense that they are given by the people. The powers of the government are *enumerated* in the sense that each one is individually identified in a list, and all acts of government, to be lawful, must be traced to that list. The draftsmen of the Constitution believed that a government should have no more power than it needs to accomplish its original purposes.

How is the Constitution enforced?

It is not enough to rely on individuals to limit themselves voluntarily to what is Constitutional. The federal courts, acting under Article III, Section 2 of the Constitution, will refuse to enforce any law, national or local, which they believe is unconstitutional. Officers of government who defy the courts and continue to act unconstitutionally may be impeached and removed from office by Congress.

I. GOVERNMENT

.....2. Constitutional Government

Goals:

The student:

1. is able to explain why the U.S. has a written constitution.
2. is able to explain why the powers of government are individually enumerated.
3. is able to explain how the citizens are protected from unconstitutional laws.

Debriefing questions:

1. Explain the statement from the Declaration of Independence.
2. Is the statement law? Explain.
3. What are delegated powers? Give examples.
4. What are enumerated powers? Give examples. Read Article I Section 8 of the U.S. Constitution. (Appendix I)
5. Are the powers delegated or enumerated?
6. Does Section 8 allow Congress to create an army and a navy? Where did they get the power to create an airforce?
7. Is the power to support education enumerated in the Constitution?
8. What specific powers are included in the commerce clause? List some examples of commerce.

Teacher Note: Explain implied powers as the right of Congress to exercise powers "necessary and proper" to carry out the enumerated powers. Read last clause of Section 8.

Section 8 allows Congress to regulate commerce among the several states.

9. Should Congress be allowed to control advertising?
10. Should Congress be allowed to control advertising on TV?
11. Should Congress be allowed to control programming on TV?
12. Should Congress regulate the wages of actors on TV?
13. Should Congress regulate a TV station without ads?
14. Under Section 8 how much power does Congress have? Should they have?
15. What happens if the people disagree with Congress over whether a power is implied?

..... 3. FEDERALISM

The powers not delegated to the United States by this Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Tenth Amendment (1791)

Federalism

Federalism is a kind of government in which political power is divided between national and local assemblies. Some decisions are made independently in each subdivision. Others are made centrally for the entire nation.

How did American federalism come about?

At the time of the American Revolution state laws differed widely, reflecting important social, economic, and cultural differences among their people. There was considerable resistance to the idea of merging all of the states into a single, uniform national political system with a single national body of laws. At the same time experience had taught the states that some decisions were best made centrally. In particular, they saw the need for a strong unified national defense and a uniform system of shipping, commerce and currency. The Constitution grants these powers, as well as the power to deal with Indian tribes, to the national government, and reserves all of the rest of the government of the states to the states themselves.

What are the reserved powers of the states and people?

The Constitution does not list the powers reserved by the states and the people because it was feared any list would be incomplete. The Tenth Amendment clarifies the intentions of the framers of the Constitution that neither the states nor the United States may exercise any power not specifically given them by the people. The people are the source of all political power and their consent, in the form of ratifying a constitutional agreement, is necessary in all cases to legitimize government.

What good is federalism?

Federalism is more than just an easy way to divide up responsibility for making decisions and carrying them out. Each state is free, within Constitutional limits, to preserve its own way of doing things--or to experiment with entirely new ideas and programs. This gives us each more freedom to live as we choose. Another benefit of federalism is that many important government decisions are made in smaller, local legislatures over which we, as individual voters, have a greater degree of influence than we have over the national Congress.

I. GOVERNMENT

.....3. Federalism

Goals:

The student:

1. is able to define federalism.
2. is able to compare and contrast the functions of the national and state governments.

Vocabulary:

ratify
currency

Debriefing questions?

1. Explain the meaning of the tenth amendment.
2. Give an example of a power delegated to the national government.
3. Give an example of a power prohibited to the states by the constitution.
4. Give an example of a power neither delegated to the national nor prohibited to the states.
5. Who owns the power?
6. Can you answer question 6 without referring to the state constitution? Explain.
7. Do states use their reserved powers differently? Explain.
8. Do these differences make a difference in where you live?

..... 4. PLURALISM

There is no wonder that this country has so many charms, and presents, to Europeans, so many temptations to remain in it. A traveller in Europe becomes a stranger as soon as he quits his own kingdom; but it is otherwise here. We know, properly speaking, no strangers; this is every person's country; the variety of our soils, situations, climates, governments, and produce, hath something which must please everyone.

Hector de Crèvecoeur's Letters from an American Farmer (1782)

Pluralism

Pluralism is the recognition of different cultural communities within a single society. Pluralism may simply mean toleration. It may mean supporting cultural arts and activities; or even making exceptions from the operation of certain laws. For example, the Amish have been allowed to keep their children out of public schools on religious grounds. It is sometimes difficult to tell whether making special laws for a cultural group is a benefit or a form of discrimination and oppression.

Is pluralism related to federalism?

When people of the same culture tend to live in the same political subdivisions, like the French-Canadians in Quebec, federalism can be used to preserve or even strengthen cultural differences. However, a democracy does not require any group to preserve its identity or to live under separate laws. Forcing people to remain different is just as dangerous as forcing them to become the same.

Can there be unity in diversity?

A society can become stronger by tolerating cultural diversity, just as it can become stronger by encouraging political diversity through federalism. The freedom to be different is a valuable right. If citizens' loyalty and willingness to sacrifice for their country is proportional to the benefits they feel they receive from citizenship, a diverse nation is strongest when it tolerates rather than attempts to limit its diversity.

Is pluralism divisive?

Some people complain that Indians and other cultural groups use their differentness as a basis to demand a disproportionate share of wealth. They feel that differentness is a dangerous basis on which to distribute wealth, arguing that it encourages citizens to seek out distinctions and conflicts of interest among themselves, whether real or imagined.

I. GOVERNMENT

.....4. Pluralism

Goals:

The student:

1. is able to define cultural pluralism.
2. is able to explain the social benefits of cultural pluralism.
3. values cultural pluralism.

Vocabulary:

cultural community
cultural diversity

Debriefing questions:

1. What is the American culture?
2. Where does it come from?
3. We have been called a national "melting pot." What does this mean?
4. Is the "melting pot" statement accurate?

Brainstorm separately:

a. national origins present in Washington State.
b. religious groups in Washington State.
c. ethnic groups in Washington State.

5. What generalizations can you make about the brainstormed data?
6. In what ways are we all alike?
7. Which values must we share for all of our cultural diversities to coexist in reasonable harmony?

BASIC KNOWLEDGE EXPECTATIONS

1. What is the difference between a democracy and a republic?

2. What is the United States Constitution?

3. How are the powers of the federal government limited?

4. What does federalism mean?

5. Who decides whether the federal government's actions are legal?

A Game of Cross-Cultural Negotiation

What happens when groups of people endowed with different resources, and enjoying different languages and customs, must meet and agree on sweeping changes in their relationship? To what extent do misunderstandings about one another lead to unsatisfactory agreements? And to what extent can we tell, after years have passed, what was really meant to be agreed to in the first place?

These are important questions in the study of Indian treaties. Indian treaties were agreements exchanging vast quantities of land, timber, minerals, and other resources for promises of peace, security, and mutual assistance. Of course, both sides want to get and keep what they think was promised to them. Sometimes it isn't all too clear what *was* promised. In fact, there are even disagreements over just how *permanent* these treaties were meant to be.

TREATYTIME is a way of experiencing some of the challenges, problems, and frustrations of the making and keeping of cross-cultural agreements.

Before playing TREATYTIME you may find it helpful to discuss these questions:

What kinds of social customs do we follow without even thinking about them?
How easily might a stranger from another society unintentionally offend us?
Or misunderstand our actions?

> [As an experiment, have two students stand facing each other about ten feet apart, then have them begin to move closer to one another one step at a time. Observe their embarrassment and avoidance of eye contact, and the inevitable laughter from the rest of the class, as they approach within what Edward Hall calls "intimate distance"--about two feet. Is this custom the reason why people look at the ceiling of an elevator instead of at one another?]

Do all languages have words for the same things?
Is it ever possible to translate ideas, no matter how careful you are?

> [If you or any of your students speak a language other than English, try to translate some concept words like *trust, loyalty, sympathy, suspicion, envy, amazement.* Are there exact equivalents? How does language reflect the kinds of behavior people expect from one another?]

TREATYTIME: GENERAL INSTRUCTIONS

Object of Play

1. There are four teams. They are the Moo, Wumps, Bungs, and Wadgets. Each has its own language, customs, and government.

2. Each team begins with a certain amount of Land or Money represented by cards. Land and Money cards can be turned in for points at the end of the game.

3. During the first half of the class period teams can agree to trade resources. Promises are kept (or broken) in the second half.

4. The team with the most points at the end of the game wins.

Negotiation

1. Resource cards are more valuable to some teams than others, making it in everyone's interest to trade.

2. All promises must be made in writing during the first half of the period.

3. Any number of agreements can be made between teams. Negotiations can be carried out anywhere by any representatives the teams choose.

4. Each team *must* use its own language and follow its own customs during the negotiations.

Enforcement

1. At the beginning of the second half, each team chooses a judge. Three judges must agree to make a decision.

2. After the judges have been chosen, each team must submit its claim for the number of points they think they deserve, explaining whether the points claimed are for Money or Land.

3. Claims for points can be challenged by other teams.

4. The judges must resolve all disputed claims on the basis of the written agreements, and their decisions are final.

TREATYTIME: SPECIAL INSTRUCTIONS FOR TEACHERS

Preparation

1. Organize teams and distribute instructions the class day before you play TREATYTIME.

2. Each student will need a copy of the general instructions and the special instructions for his or her team. Remind the class that team instructions are confidential and should not be discussed with other teams at any time.

3. Just before your class meets for TREATYTIME arrange all the chairs and tables in your room in four groups, one in each corner. Make a large sign for each team with its name on it and tape or tack it up in that team's corner.

4. Make ten copies of the sheet of resource cards and cut them apart. Place each team's cards face down in its corner as follows before class begins: *30 Money cards to the Wadgets, 20 Land cards to the Bungs, 15 Land cards to the Wumps, and 12 Land cards to the Moo.*

Beginning play

1. Send each team to its assigned corner.

2. Appoint a King for the Bungs and divide the Wumps into High and Low Wumps (see the special instructions for these two teams). Make your choices known only to the Bungs and Wumps.

3. Make sure plenty of paper is available for writing agreements.

4. Remind the class that all agreements must be completed in writing by mid-period, and tell them to begin.

Scoring

1. You will be ultimately responsible for seeing that scoring is consistent with the following schedule--understanding, of course, that the judges alone can decide whether any particular team "has" a resource.

	value in points for:		
team	*1 Money card*	*1 Land card*	*1 Money + 1 Land*
Wadget	10	15	35
Bung	15	20	35
Wump	15	25	40
Moo	15	30	40

2. All teams begin with 300 points.

3. Since money can be used to develop land, a team scores more points for a Land + Money *pair* than a Land card and a Money card are worth separately.

TREATYTIME: SPECIAL INSTRUCTIONS FOR WADGETS

You Wadgets have lots of money but no land. To score a lot of points you will have to buy land from the Bungs, Wumps and Moo.

The Wadgets have a President chosen by election. Whoever gets the most votes wins. Hold your first election at the beginning of the game, and hold another one whenever you want to. You can keep the results of your election to yourselves.

According to the Wadget Constitution "laws" are made by the President and the vote of a majority of the Wadgets. "Treaties" are negotiated by the President and then must be approved by 2/3 of the Wadgets.

Wadgets are very fond of saying "A man's handshake is as good as his contract." Wadgets love to shake hands. You shake hands whenever you meet and whenever you say goodbye. You shake hands whenever you make promises. In meetings you shake hands every time you speak, as a sign of respect for your listeners. This is a very important Wadget custom. The other most important Wadget custom is saying "boo-oo!" very loudly when you agree with something someone else is saying.

The Wadget language makes very careful distinctions among different kinds of promises:

"contract"	a binding promise among individual people; if one party to a contract breaks it, he must pay the other for its losses
"agreement"	a promise that does not have the force of law
"treaty"	a promise among countries or nations that has the force of law only as long as both sides continue to go along with it
"compact"	a promise among countries or nations that none of them have the power to break without the consent of the others

Because you Wadgets think your ways of doing things are better than anyone else's, you will try to get the other teams to observe the customs of the Wadgets, and prefer to make deals with those teams that do.

At the end of the game you Wadgets will score 10 points for each Money card you are entitled to, 15 points for each Land card, and 35 points *for each pair* of a Money card and a Land card.

TRY TO MAKE THE BEST DEALS YOU CAN. YOU DO NOT HAVE TO GIVE OTHER TEAMS ANY INFORMATION ABOUT YOURSELVES UNLESS YOU WANT TO. ABOVE ALL, REMEMBER TO TALK AND ACT LIKE GOOD WADGETS.

TREATYTIME: SPECIAL INSTRUCTIONS FOR THE MOO

The Moo have few resources, but they value what they have very much. As a rule, the Moo like things just the way they are.

You Moo are a very democratic people. You have no written laws or constitution, but it is understood that no decision is made affecting you all unless *everyone agrees*. You often send messengers to discuss things with other people, but you don't consider yourselves legally or morally bound to any agreement until you've all had a chance to get together and everyone has voted in favor of it.

You are also a very religious people. Believing, as you Moo do, that the gods want all people to live the same good lives you do, you are only willing to share your resources with people so long as they remain "moo-moo."

Your language is a lot like English, but contains some special words you must use very carefully:

"moof"	to give something away reserving a right to take it back whenever you want
"gitch"	to give away a thing such as food or clothing; gitching is forever--a good Moo never goes back on a gitch
"moo-faa"	to let someone use your land for a while--the Moo have no word for giving away land forever
"moo-moo"	being good in the Moo way, behaving with dignity like a good Moo

The Moo are *highly offended* by physical contact with other people such as hand-shaking and back-slapping. You Moo consider people who do these things very uncivilized, and when you see them do it your custom is to stick out your tongues as a sign of disgust. It is a Moo belief that uncivilized hand-shaking and back-slapping peoples cannot be trusted, and the Moo will not make any kind of gitch with such people--although they might make a moof, or a moo-faa.

At the end of the game the Moo will score 15 points for each Money card they are entitled to, 30 points for each Land card, and 40 points *for each pair* of a Money card and a Land card.

TRY TO MAKE THE BEST DEALS YOU CAN. YOU DO NOT HAVE TO GIVE OTHER TEAMS ANY INFORMATION ABOUT YOURSELVES UNLESS YOU WANT TO. ABOVE ALL, REMEMBER TO TALK AND ACT LIKE GOOD MOOS!

TREATYTIME: SPECIAL INSTRUCTIONS FOR BUNGS

You Bungs are rich in resources. You are all very proud of yourselves, and your name, "Bung," means, "the only real people in the world."

All the Bungs are governed by a King (or Queen). Being King is hereditary. The King is treated very carefully. When the King speaks, all the Bungs cover their eyes with their hands out of respect. No Bung ever speaks to the King unless being first spoken to. Any *minor* thing the King asks to be done (like "get me a chair to sit on") is done at once.

But the King of the Bungs isn't really all that powerful. Nothing he does as King has to be followed by other Bungs unless they want to. Usually they do what the King commands out of respect, but if he does something really very disagreeable they ignore it.

Your language is a little different from English, containing among other things some very special words to describe the nature of promises.

"tunk"	the kind of promise the King can make
"tunk-runk"	a promise made to be kept, but with regrets
"go-tunk"	to make a promise not meaning to keep it, or to give something away not meaning to give it
"go-bung-tunk"	a solemn promise not to be broken under any circumstances
"go-bung"	to act respectfully before the King, to treat the King the way a Bung would

Since you Bungs are so respectful of your King, you want other people to act that way, too. You always refuse to make deals with people who do not "go-bung."

At the end of the game you Bungs will score 15 points for each Money card you are entitled to, 20 points for each Land card, and 35 points *for each pair* of a Money card and a Land card.

TRY TO MAKE THE BEST DEALS YOU CAN. YOU DO NOT HAVE TO GIVE OTHER TEAMS ANY INFORMATION ABOUT YOURSELVES UNLESS YOU WANT TO. ABOVE ALL, REMEMBER TO TALK AND ACT LIKE GOOD BUNGS!

TREATYTIME: SPECIAL INSTRUCTIONS FOR WUMPS

The Wumps are a very unusual people.

Long ago the Wumps broke up into two bands, the High Wumps and the Low Wumps. Each band governs itself and choses its own leaders, called "gups." Sometimes there are as many gups as there are Wumps.

The High Wumps still behave as if they represent all the Wumps, frequently referring to the Low Wumps as "our children" and trying to act on their behalf. The Low Wumps resent this and, on principle, oppose everything decided upon by the High Wumps. Unfortunately, the Low and High Wumps have never divided up their land, and continue to use it all together. This leads to many arguments.

Under Wump customs, Wump women own all the land, and no arrangement involving land is lawful unless the women have agreed to it. Nonetheless Wump men have been known to make deals on their own and keep them secret from the women, hoping to keep all the profits to themselves.

Wumps never discuss business matters with other people. They listen very politely to everything that's said, and then either go along with it or go away without saying a word. Wumps believe it rude to argue and dicker. By the same token, when they have a proposal to make, they simply say what it is and then go away, leaving the other folks to either accept or reject it.

Wump language distinguishes among different kinds of promises:

"brip"	a binding promise among individual people; if one party to a brip breaks it, he must pay the other party for its losses
"klonk"	a promise that does not have the force of law or morality
"moof"	a promise among countries or nations that has the force of law and morality as long as both sides continue to go along with it
"grand-moof"	a promise among countries or nations that none of them have the power to break without the consent of the others

At the end of the game you Wumps will score 15 points for each Money card you are entitled to, 25 points for each Land card, and 40 points *for each pair* of a Money card and a Land card.

TRY TO MAKE THE BEST DEALS YOU CAN. YOU DO NOT HAVE TO GIVE OTHER TEAMS ANY INFORMATION ABOUT YOURSELVES UNLESS YOU WANT TO. ABOVE ALL, REMEMBER TO TALK AND ACT LIKE GOOD WUMPS!

one MONEY card

one MONEY card

one LAND card

one LAND card

-26-

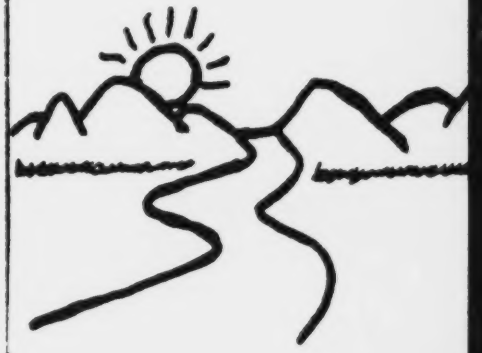
one MONEY card

30

one LAND card

one LAND card

one LAND card



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TREATYTIME: DEBRIEFING QUESTIONS

Ask each team to make a report answering the following questions:

1. What was your goal in negotiating with the other teams? How many Land and Money cards did you try to get?
2. Which teams did you try hardest to trade with? Why?
3. How did you find out about other teams' strengths, weaknesses, and customs?
4. How reliable was your information? Why?
5. Did you need "interpreters" to communicate with the other teams? If yes, reliable were they?
6. Were your intentions misunderstood by other teams? By the judges? Explain using specific examples.
7. Did your team try to take advantage of other teams' customs? Of their ignorance of your customs? Explain using specific examples.
8. If you could do it all again, what would you do to give your team the best possible chance of winning?

II-TREATIES AND INDIAN TREATIES

..... 1. THE TREATY POWER

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, providing two thirds of the Senators present concur.

United States Constitution, Article II, Section 2

Treaties

In *The Federalist*, treaties are described as contracts between nations. Like any other contract, a treaty involves an exchange of things, and usually provides for its execution within a certain period of time.

What do treaties exchange?

Some treaties exchange land for money, just like contracts for the sale of land. These are called "cessions." Others provide for special trading privileges for citizens of the two governments, or organize joint ventures for their mutual advantage. Businesses often make contracts of that nature.

How are treaties made?

Through their representatives, both countries negotiate an agreement. Under the Constitution the United States is not bound by any agreement unless it has the approval of both the President and the Senate. Other countries have their own procedures for approving or "ratifying" treaties. Like a contract, a treaty is not binding upon either party unless both have made and approved it in the manners provided by their laws.

Why the President and the Senate?

The framers of the Constitution were mostly concerned with military agreements and alliances when they drafted the Treaty Clause. They felt that secrecy, speed and decisiveness in reaching strategic decisions required that a single individual--the President--make the agreement and that a small, select, and, in those days secret body--the Senate--should give it final approval. Nowadays, the Senate is no longer such a small and secretive body, and Presidents prefer making "Executive Agreements" with the approval of both Houses of Congress like any other laws.

II. TREATIES AND INDIAN TREATIES

.....1. The Treaty Power

Goals:

The student:

1. is able to explain why countries make treaties.
2. is able to explain the process of making a treaty.

Vocabulary:

The Federalist
cession
executive agreements
negotiate
framers of the Constitution

Debriefing questions:

Read the Treaty of Paris which ended the American Revolution (Appendix II).

1. What does the United States promise to do?
2. What does Great Britain promise to do?
3. Was any property exchanged?
4. Who do you think got the best deal? Explain.
5. What would happen if the treaty were broken?
6. Has the U.S. signed any treaties recently?
7. What were the terms of the treaty?
8. Who got the best deal?
9. What happens if we break it?
10. Why do countries make treaties?
11. Do you think the process should be changed? Explain.

..... 2. INDIAN TREATIES

The sovereignty of a particular State is not impaired by its occasional obedience to the commands of other States, or even the habitual influence exercised by them over its councils. It is only when this obedience, or this influence, assumes the form of express compact, that the sovereignty of the State, inferior in power, is legally affected by its connection with the other.

Henry Wheaton's Elements of International Law (1836)

Why were Indian treaties made?

Treaties have been made with Indian tribes since the first European explorers visited North America. There are 366 treaties still in force with tribes in the United States. Indian treaties were made for several reasons. Tribes were frequently able to defend against encroachments on their lands, forcing American settlers to pay for what they needed. Many European nations refused to recognize the legitimacy of conquest as a means of acquiring tribal territory, so to protect its interests in international affairs the United States had to show that it was acquiring tribal lands peacefully. Finally, treaties often provided commercial and military advantages for both parties.

How were Indian treaties made?

Indian treaties were negotiated in meetings between representatives of both nations. Language was usually a problem. Frequently the transcripts of the discussions, the English text of the treaty, and Indian reports of the transactions all disagree with one another. Often the United States' representatives came prepared with a proposal and threatened war if it was not accepted by the Indians. Sometimes the representatives of the tribes had no authority to make the promises they did, or they only represented themselves and their own families.

What do Indian treaties say?

Indian treaties include the same kinds of things as other treaties. They ended wars (in only two treaties, however, did tribes concede defeat), sold or exchanged lands, opened up trade, established special procedures for peacefully resolving disputes among their citizens, and bound the United States to provide "foreign aid" in the form of money, food, machinery, teachers, and technical training. Indian treaties differ from other treaties in only two important aspects. Most Indian treaties delegate to the United States power over war and foreign trade--just as the states delegate these powers to the federal government in the Constitution. Some Indian treaties also authorize the United States to enforce some of its laws within tribal territory for the protection of Indians and non-Indians alike. This is also similar to the states.

Why did we stop making Indian treaties?

Motivated by Congressional concern over the amount of foreign aid the President had been agreeing to in Indian treaties, in 1871 Congress passed a law forbidding the President to negotiate any more Indian treaties. The same law provided that "no obligation of any treaty lawfully made and ratified... be... invalidated or impaired." Since 1871 the President has continued to make contracts or "agreements" with Indian tribes, ratified by both Houses of Congress, and the courts usually treat these documents as if they were treaties.

II. TREATIES AND INDIAN TREATIES

.....2. Indian Treaties

Goals:

The student:

1. is able to explain why the U.S. made treaties with Native American Nations.
2. is able to explain how the treaties were made.

Vocabulary:

encroachments
invalidated
impaired

Debriefing questions:

Read the Treaty of Medicine Creek the appropriate Articles I - XII. (Appencix III)

(A useful activity might be to have the students rewrite the more important sections of the treaty in their own words. Next have them determine whether each section favors whites or Indians. Finally, have them explain how the sections might be written more equitably.)

1. How do Indian treaties differ from other treaties?
2. What did the U.S. get from the tribes?
3. What did the U.S. pay for what it got?
4. Does the treaty establish a continuing relationship between the tribe and the U.S.?
5. Do the tribes give the U.S. any powers to govern them?
6. Who got the best deal?
7. How important were the "good intentions" of the parties to success of this treaty? Explain.
8. Are there any parts to the Medicine Creek Treaty that are obsolete? Explain.

..... 3. TREATY ENFORCEMENT

One who attempts to survey the legal problems raised by Indian treaties must at the outset dispose of the objection that such treaties are somehow of inferior validity or are of purely antiquarian interest. ... Although treaty making itself is a thing of the past, treaty enforcement continues.

Felix Cohen's Handbook of Federal Indian Law (1942)

Who enforces Indian treaties?

Tribes and tribal members can protect their treaty rights by taking treaty-violators to court. The federal courts have jurisdiction of "all Cases, in Law or Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority." Treaties are enforceable against the United States and its officers, the states, and individual citizens. Article VI of the Constitution provides that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Are all of the terms of Indian treaties enforceable?

All provisions of Indian treaties are enforceable, but not all have been enforced. Most tribal lawsuits brought under treaty provisions have dealt with property such as land, fishing rights, and hunting rights. The issue has been whether property protected by treaty has been interfered with by state or national government. The courts deal with these cases in about the same way they deal with property disputes among private citizens. The tribe has a right to have its property back or compensation for the loss.

How can an Indian treaty be changed?

Like any other treaty, an Indian treaty can be changed by the mutual agreement of the parties--that is, by another treaty. Since the 1880's Congress has claimed a power to change the terms of an Indian treaty *without tribal consent.* The courts upheld this claim, assuming that this extraordinary power would only be exercised for Indians' benefit. Tribes argue that federal laws enacted without their consent and in violation of their treaties--for example, laws subdividing and forcing sales of their lands and restricting the powers of their governments--have not benefited them at all. In international law one nation's breach of a treaty absolves the other of all obligations under it. However, neither tribes nor the United States can afford a complete political separation. Tribes want the United States to keep its promises, and the United States expects tribes to keep theirs.

Must tribes be compensated for changes in their treaties?

Yes. Even if Congress does have power to change Indian treaties without tribal consent, it must, under the Fifth Amendment, compensate the tribes for any resulting losses of property. The Fifth Amendment prohibits the taking of "private property... for public use, without just compensation." In lawsuits and under special acts of Congress such as the Indian Claims Act and Alaska Native Claims Settlement Act tribes have recovered about one and one-half billion dollars from the United States. The lands and resources still owned by tribes and protected by their treaties are worth many times that amount.

II. TREATIES AND INDIAN TREATIES

.....3. Treaty Enforcement

Goals:

The student:

1. **is able to explain the difference between federal laws and treaties.**
2. **is able to explain the ways treaties can lawfully be changed.**
3. **knows that all private property, including treaty property, is protected by the fifth amendment.**

Vocabulary:

law or equity
compensation
absolve
obligation

Debriefing questions:

1. **What does the fifth amendment say about private property?**
2. **What is "just" compensation? Who decides?**
3. **What might the government seize of your's or your family's that would be difficult to appraise in money?**
4. **By paying compensation could the government take your property for use by another private citizen? Explain.**
5. **By paying compensation could the government take any of your civil rights as a citizen?**
6. **Is the U.S. Constitution a kind of treaty among states? Explain.**
7. **Can a treaty between two governments become their constitution?**
8. **What if one of the parties to the U.S. Constitution refused to abide by it? Explain.**

..... 4. THE FUTURE OF INDIAN TREATIES

Is the American nation--now 200 years old, and 100 full years beyond the era of the Little Bighorn--yet mature enough and secure enough to tolerate, even to encourage, within the larger culture, societies of Indian people who wish to maintain their own unique tribal governments, cultures, and religions?

Final Report of the American Indian Policy Review Commission (1977)

What would full enforcement of all Indian treaties mean?

Many millions of acres of land and other resources such as water would have to be returned to tribes. The federal government's authority to supervise tribal government would be considerably reduced, and the states would lose all jurisdiction and authority on reservations. Tribes would probably see these changes as beneficial. On the other hand the level of federal financial and technical assistance tribes receive today, while no more than the states enjoy, is far greater than any treaty promises. There may be room for compromise.

Have changes in tribes' circumstances affected treaties?

Although their populations are about the same as when the treaties were made, most tribes today are restricted to much smaller territories. Tribal citizens are the poorest people in the United States owing, many (including the American Indian Policy Review Commission) argue, to generations of federal tampering and experimentation with their governments and economies. Tribes are no longer a major military power in North America. Like general American culture, tribal culture is undergoing change; both cultures have grown more alike, borrowing from one another. The law does not recognize any of these changes as impairing treaties' enforceability, although to be sure some of the details in treaties--like federal promises to provide tribes with blacksmiths--no longer make much sense.

Would treaty abrogation result in assimilation?

It is frequently suggested that tribal citizens would be better off living in the states among state citizens and participating exclusively in state, rather than tribal government. Tribal members are free to do that now if they wish, however. For many, the desire to remain self-governing outweighs the economic advantages of political assimilation. The question must be asked, then, whether any attempt to forcibly assimilate Indians would accomplish any real lasting change.

Could tribes become a part of the national political system?

Tribes already are a part of our political system. Their treaties, like the Constitution and states' enabling acts, are agreements for sharing political power with the national government. Like states, tribes manage their own internal affairs subject to federal laws. There are differences between the specific powers of states and tribes, some of which tribes would like to keep and some of which they would like to change. On the whole, though, both states and tribes are local governments protecting, to the best of their abilities, the interests of their citizens. Many states share tribes' problem of raising enough money to pay the cost of government programs. This may prove to be the greatest problem for the future survival of both state and tribal governments.

II. TREATIES AND INDIAN TREATIES

.....4. The Future of Indian Treaties

Goals:

The student:

1. is able to compare and contrast the total enforcement of the treaties with the total abrogation of those treaties.
2. is able to explain how tribal relationships between tribes and the U.S. has changed since the time of the treaties.
3. is able to explain similarities and differences between federal, state, and tribal governments.

Vocabulary:

abrogation
jurisdiction
assimilation

Debriefing questions:

1. What would happen if every provision of the Medicine Creek Treaty were fully enforced?
2. Which provisions of the treaty probably could be removed without disagreement?
3. Which provisions of the treaty were most valuable to the Indians in 1855? Today?
4. If the U.S. government were to abrogate this treaty, which items would require "just compensation" under the fifth amendment?
5. By paying compensation can the State of Washington change any part of this treaty? Explain.
6. If the U.S. government abrogates the treaty, what rights other than property would they lose? Could these be compensated?
7. Is the survival of tribal governments under treaties a good example of federalism? Pluralism? Explain.

Note to the Teacher: Certain treaty rights such as hunting, fishing, etc., are rights "retained" by a sovereign nation at the time the treaty was made with the U.S. government.

BASIC KNOWLEDGE EXPECTATIONS

6. What is a treaty?

7. What is a treaty's place in United States law?

8. How are Indian treaties different from other United States treaties?

FISHGAME

A Puget Sound Salmon Fishing Game

What's it like to be a salmon fisherman in Puget Sound? What kinds of risks do fishermen take? How easy is it for fishermen to find fish, and how easy is it for fisheries regulators to tell when too many fish are being caught? How are all of these things affected when different groups of fishermen are required to fish at different times, as is the situation after *U.S. v. Washington?*

These are some of the questions about the Washington fishing rights controversy that can be explored with FISHGAME.

FISHGAME is a very simple model of Puget Sound salmon fishing. In FISHGAME student fishermen compete for a single run of salmon migrating to the Dungeness River near Sequim, while other students, working together as the Department of Fisheries, try to prevent the run from being overfished to extinction. All of the fishermen use the same kind of fishing gear (gill-nets). Random accidents (bad weather, boat trouble) cause some fishermen to lose fishing days.

Of course, in real life there are hundreds of runs of salmon and fishermen use many different kinds of gear.

Your class will get the most out of FISHGAME if they first understand the migratory life-cycle of salmon. Draw the migration path of the Dungeness salmon run used in FISHGAME on the FISHGAME board and discuss these questions?

Where are the salmon closest together and easiest to catch? Farthest apart and hardest to catch?

Where are the salmon easiest to find? Easiest to tell apart from other runs of the salmon? Hardest to tell apart?

Where are the salmon largest and fattest?

What are some different ways people could fish for salmon? On the basis of what you know about the life-cycle of salmon, where and how would you prefer to fish to make the most money? To catch the largest numbers of fish?

How can anyone tell how many salmon have already been caught during a season? How many are still left in the water uncaught?

> [As an extra exercise to demonstrate the problems of counting fish in the water when stocks are mixed and there are seasonal fluctuations in numbers of each stock, fill a box with four or five different colors of beads, marbles or jellybeans in some fixed ratio. Write this ratio on the board. Now mix up the contents of the box and pour about half out into a smaller box. Have a student draw out most of the contents of the smaller box and write the results of this sampling on the board. Now ask your class to determine as best they can *how many more* beads (or whatever) *of each color are left* in the smaller box. Conclude by explaining the meaning of probabilities.]

FISHGAME: GENERAL INSTRUCTIONS

Object of Play

1. There are two groups of players. Twelve students (or, if you wish, twelve teams of students) will be fishermen. All of the rest will be the Department of Fisheries.

2. There will be one run of salmon, migrating to the Dungeness River to spawn. It will make the trip in six days, following roughly the path indicated on the FISHGAME board. The salmon will be spread out on both sides of the migration path for ten miles or more.

3. The job of the fishermen is to catch as many fish as they can. Any fisherman who catches *no* fish can't make the payments on his or her boat and loses it.

4. The job of the Department of Fisheries is to preserve the Dungeness salmon. This requires that at least 800 salmon reach the river to spawn; 800 is the "minimum escapement number."

Fishing

1. Each fisherman will have a scorecard, consisting of a map of the Strait of Juan de Fuca and spaces to record his daily catch. Fishermen can use their scorecards to plan where they will fish and to add up their scores.

2. Before each fishing day each fisherman will be dealt a "bad news card." Most of these cards are blank, and can be ignored. A few, however, mean boat trouble, storms, or other problems that will keep fishermen from fishing. Fishermen must follow the instructions on the cards they draw.

3. When the teacher announces the beginning of a fishing day, each fisherman indicates where he wants to fish by writing in his boat number (from his scorecard) on that spot on the large FISHGAME board.

4. After all boat locations have been written in for the day, the teacher will score that round. If a fisherman has caught any fish, the teacher will announce it (for example, "boat number five, 100 fish!"). Fishermen should not only keep careful count of their own catches, but find out how well other fishermen are doing to get a better idea of where the fish are running most plentifully.

Regulation

1. Each member of the Department of Fisheries has a scorecard, too, to try to keep track of how many fish are being caught, and where.

2. Members of the Department *have a right* to look at any fishermen's scorecards at any time.

3. The Department can, at the beginning of any fishing day, close down *all* fishing that day, or close down all fishing in *any part* of the FISHGAME board that day. If any fisherman is caught fishing in violation of one of these Department orders, the Department can, after checking with the teacher (who is final judge in these matters), take away his day's catch, his boat, or both.

FISHGAME: SPECIAL INSTRUCTIONS FOR TEACHERS

Preparation

1. Assign students to be fishermen and regulators and distribute instructions the class day before you play FISHGAME. There *must* be only twelve individuals or teams fishing.

2. Each student will need a copy of the general instructions and a copy of the student "scorecard" included in this packet. Explain the use of the scorecard when you distribute it. Number the fishermen's scorecards from 1 to 12. These will be their identifying "boat numbers."

3. Before your class meets to play FISHGAME, paste or tape together the four sheets that make up the FISHGAME board. Also make a transparency of the "fishcard" included in this packet and cut it out with a scissors. Finally, make ten copies of the "bad news cards," cut them apart, and shuffle them like a deck of playing cards.

4. Just before your class arrives, arrange all tables and chairs in a semicircle around your desk, leaving plenty of room in the middle. Lay the FISHGAME board on your desk facing the class.

Beginning play

1. Have a student helper deal out the "bad news cards," one card to each student fisherman. Students must follow the instructions on these cards.

2. As soon as all the fishermen have been dealt cards, announce that fishing will begin. Each fisherman indicates where he wants to fish by writing his boat number on that spot on the FISHGAME board. Give fishermen no more than five minutes for this.

3. When everyone has returned to their seats, score the round using the transparent fishcard. Never let the class see the fishcards!

4. After scoring, ask the Department of Fisheries to announce any time or area closures they wish to make for the next fishing day. Then have the "bad news" cards dealt again and start over. FISHGAME is designed for six fishing days or rounds.

Scoring

1. The fishcard has printed on it 36 dots in 18 squares. Each dot represents 100 salmon.

2. To score each fishing day or round, place the fishcard on the board so that it corresponds with the marker (a star) for that day. There are six markers, numbered from 1 to 6.

3. To help the Department plan what action it will need to take to see that at least 800 salmon make it back to the Dungeness, these historical statistics are offered:

Year	*Salmon Caught*	*Escapement*	*Total*
1970	2700	1200	3900
1971	2400	1000	3400
1972	2300	1700	4000
1973	2800	800	3600
1974	2300	900	3200
1975	2400	1600	4000
1976	2500	1000	3500
1977	2700	1000	3700
1978	2000	1100	3100
average	2423	1144	3567

4. If a boat number falls within a square containing any dots, cross off *one dot* in that square, calling off the boat number and its catch, that is, "boat number--, 100 fish!" If a boat falls between two squares it "catches fish" in only one of them. If all the dots in a square are crossed off, no more fish can be caught in that square. No fish can be caught on "land."

5. When the game is over, each fisherman should have his own record of how many salmon he caught, and you should have a record, on your fishcard, of how many salmon survived to "spawn."

U.S. v. Washington version

1. As just described, FISHGAME simulates a salmon fishery *before* the Indian treaty fishing rights decision, *U.S. v. Washington*. It does not distinguish among different groups of fishermen.

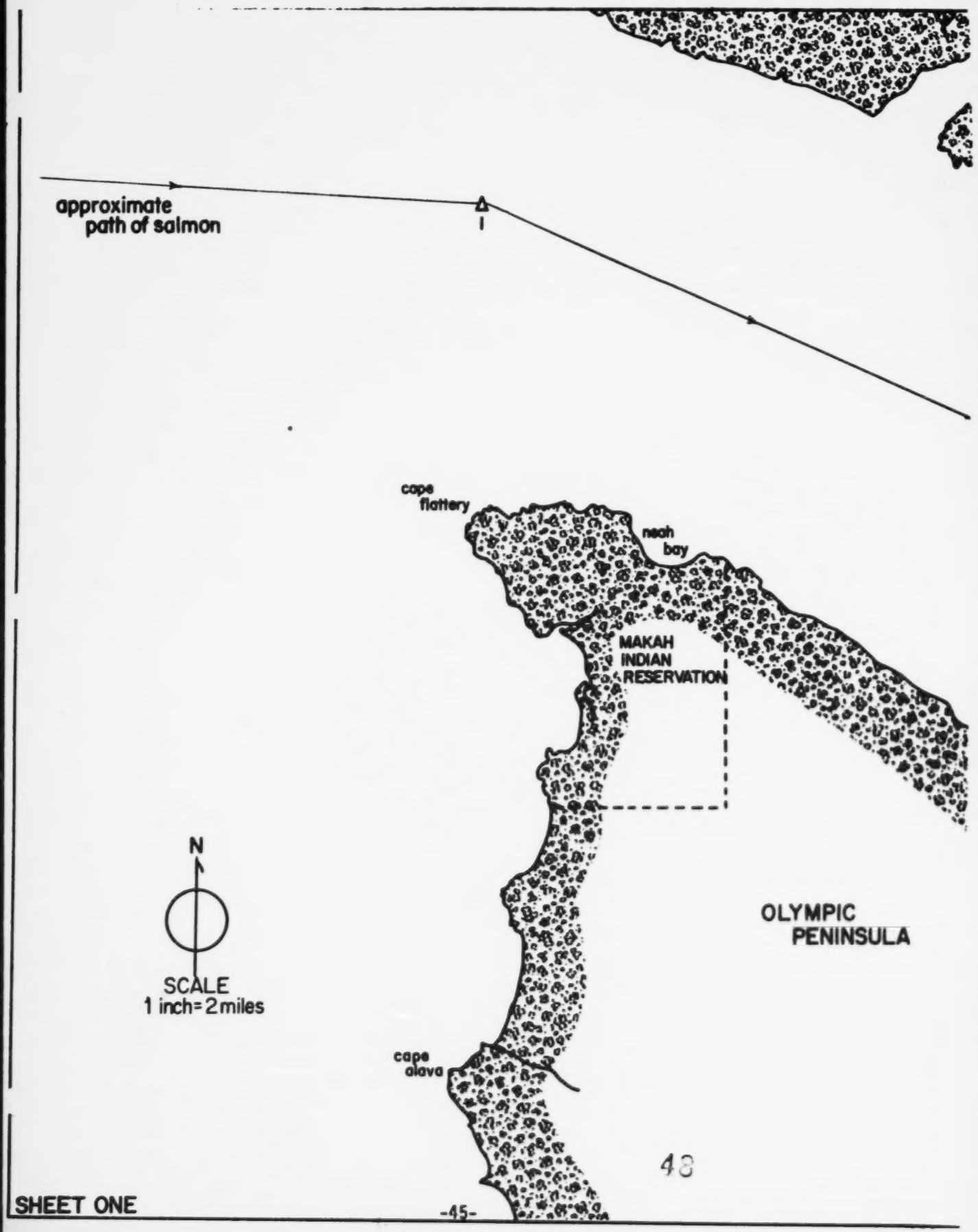
2. To play FISHGAME as a simulation of the treaty-fishing situation, identify, before game play, three fishermen (or fishing teams) as tribal fishermen. All rules of FISHGAME stay the same *except* that non-tribal fishermen can only fish on even-numbered fishing days.

3. This version of FISHGAME is most instructive if played *after* the standard version.

4. After you play this version of FISHGAME, discuss with your class the following questions:

> *How much better off were the individual tribal fishermen as a result of the fishing-days rule? Will this advantage last long if other tribal members, attracted by the new law, start fishing, too?*
>
> *Was it harder for the Department of Fisheries to do its job as a result of the fishing-days rule? Why?*
>
> *How did the fishing-days rule affect the total salmon catch of both groups?*

BAD NEWS *YOUR BOAT SPRINGS A LEAK. GO BACK TO THE DOCK; NO FISHING FOR YOU TODAY!*	BAD NEWS *STORMY WEATHER KEEPS YOU TIED UP AT THE DOCK; NO FISHING FOR YOU TODAY!*	BAD NEWS	BAD NEWS
BAD NEWS	BAD NEWS	BAD NEWS	BAD NEWS
BAD NEWS	BAD NEWS	BAD NEWS	BAD NEWS
BAD NEWS	BAD NEWS	BAD NEWS	BAD NEWS

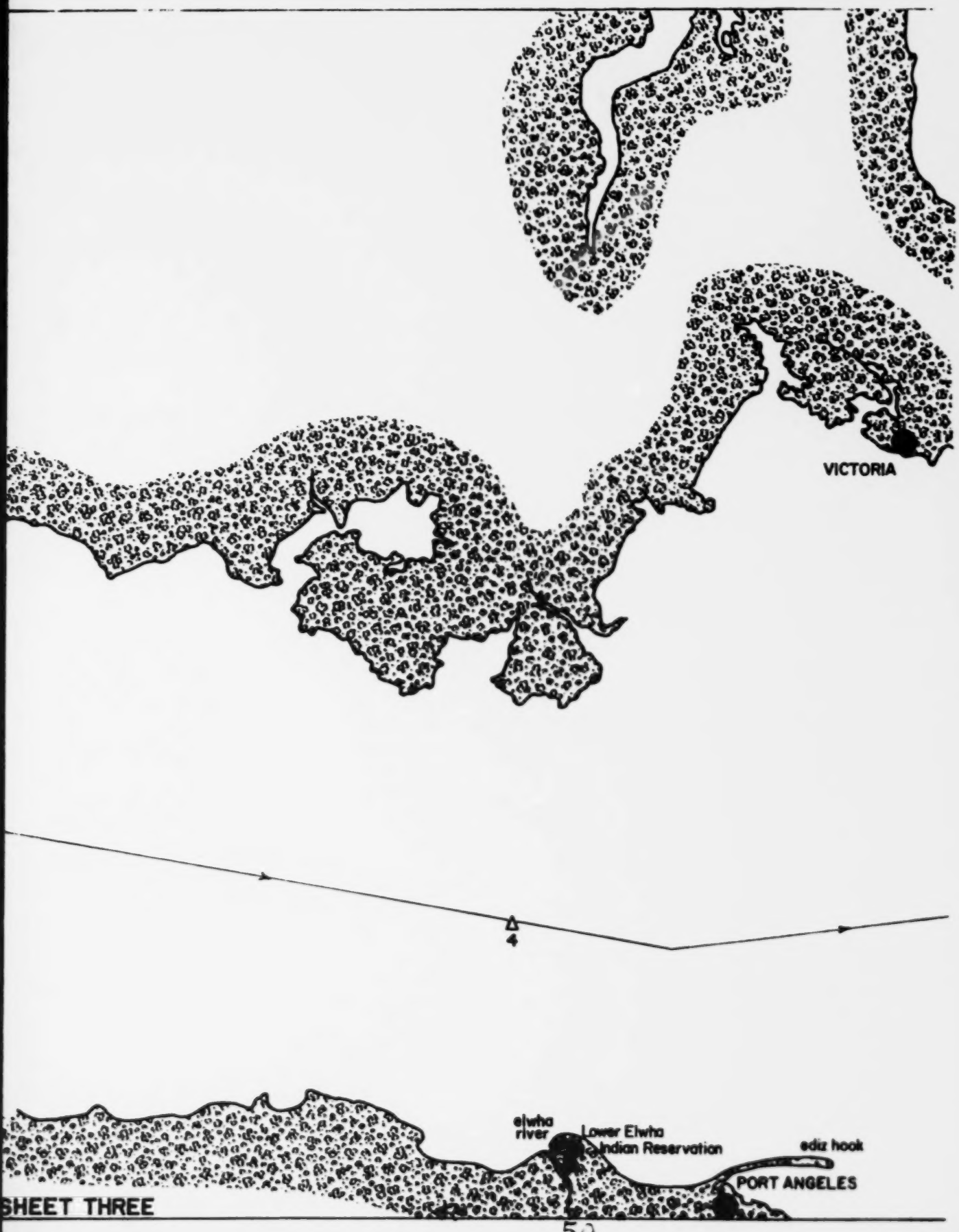

approximate
path of salmon
1
cape
flattery
neah
bay
MAKAH
INDIAN
RESERVATION
N
SCALE
1 inch= 2 miles
OLYMPIC
PENINSULA
cape
alava

48

SHEET ONE

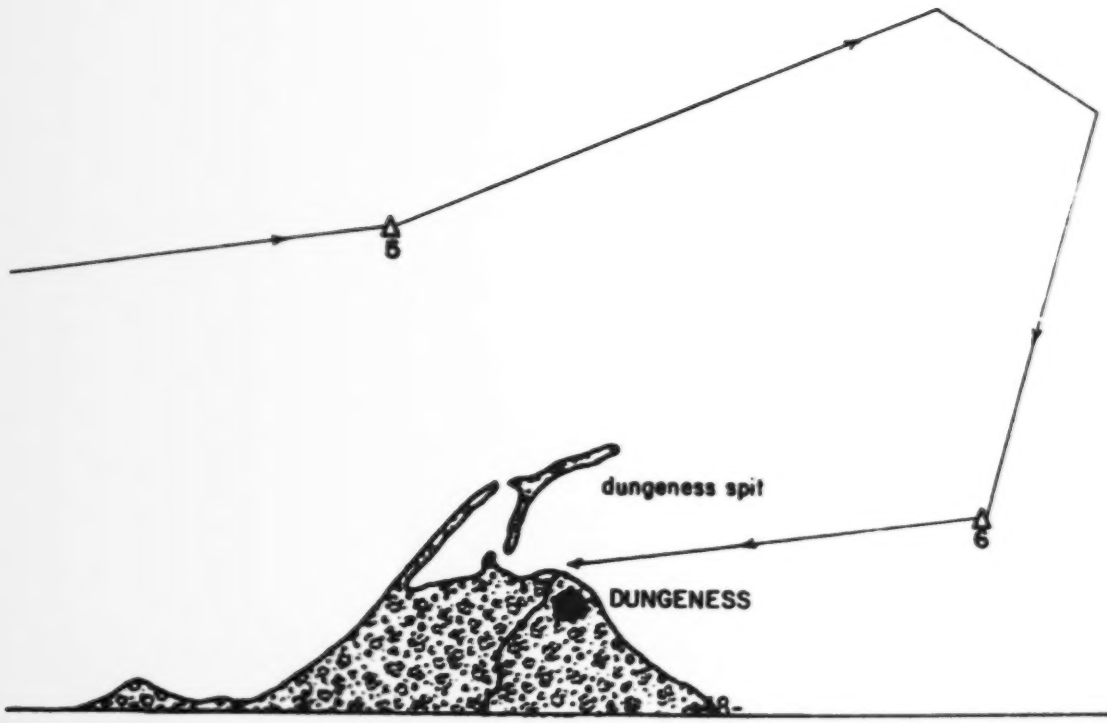
VANCOUVER ISLAND
STRAIT of JUAN de FUCA
2
3
sekiu river
hoko river
clallam bay
pysht river

SHEET TWO


VICTORIA
4
elwha river
Lower Elwha Indian Reservation
ediz hook
PORT ANGELES
SHEET THREE

the fishgame

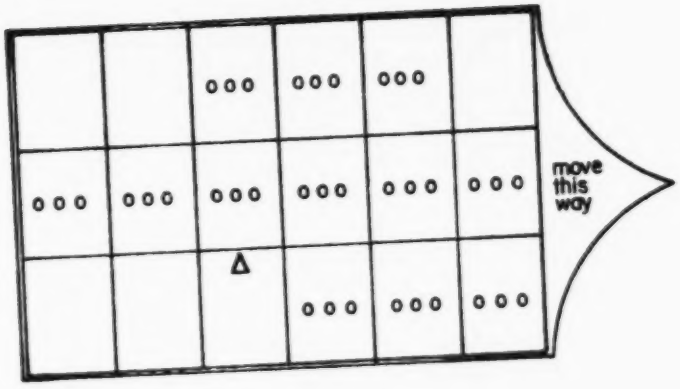
GAME BOARD

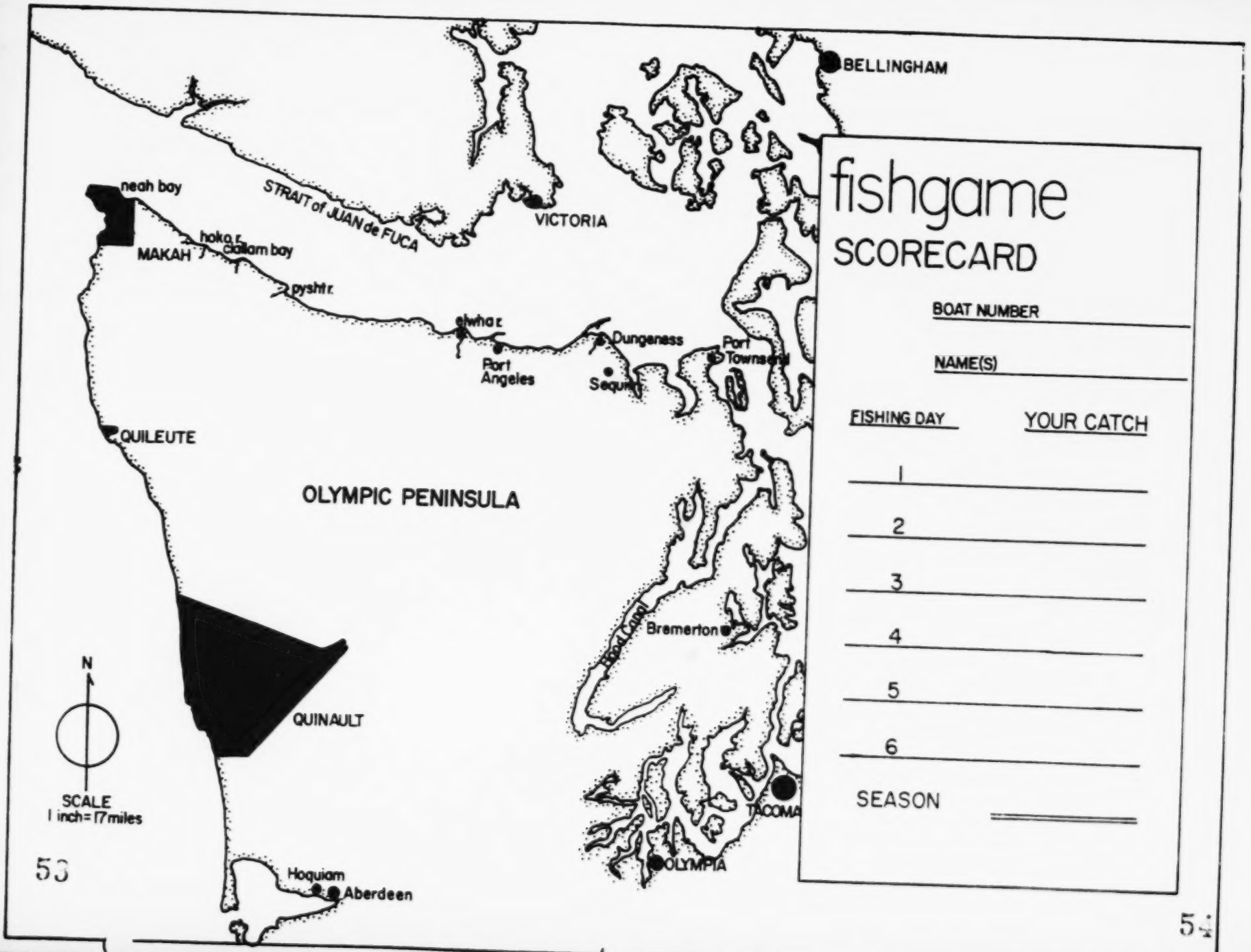


SHEET FOUR

this is your fishgame FISHCARD

Each o represents 100 SALMON
The Δ is the point of alignment





fishgame
SCORECARD

BOAT NUMBER _____

NAME(S) _____

FISHING DAY	YOUR CATCH
1	
2	
3	
4	
5	
6	

SEASON _____

FISHGAME: DEBRIEFING QUESTIONS

Debriefing questions for fishermen:

1. How did you go about trying to predict where to find the salmon?
2. How successful were your predictions? Why?
3. How often were you unable to fish where and when you wished?
4. How well were your own efforts and skills rewarded? Did your catch reflect your effort and abilities?
5. How would you change the fishery to give yourself a better chance to make a good catch in the future?

Debriefing questions for regulators:

1. How did you go about trying to predict the numbers and movements of the salmon?
2. How successful were you? Why?
3. What could you have done to do a better job of prediction?
4. How effective were your regulations in protecting the salmon runs? Were problems caused by
   - (a) poor information
   - (b) badly-designed regulations
   - (c) little compliance from fishermen
   - (d) poor enforcement
   - (e) all of these? How?
5. How would you change the fishery to make your job easier the next time?

III-THE FISHING RIGHTS CONTROVERSY

..... 1. PROPERTY

The great and chief end, therefore, of men's uniting into commonwealths and putting themselves under government is the preservation of their property.

John Locke's Second Treatise of Government (1690)

Property

Property is the right to control something of value, whether it be an object, an idea, an opportunity, or a useful location. Control means power to improve the thing, destroy it, put it to use, sell it, or do nothing with it. Control also means power to prevent others from using, injuring, or interfering with it. Ownership can be an incentive to maximize the productive value of things. An owner who invests time and resources in the careful management, conservation and use of his or her property can expect to enjoy all of the benefits of his or her efforts.

How are property rights protected?

Property can be protected by law or force. Every society discourages the use of force and violence among its members and makes rules for settling disputes peacefully. Rules describe how property can be acquired, sold, loaned, and exchanged. Rules also prohibit tampering with others' property. In our society, owners can sue for damage done to their property or obtain an injunction to prevent further interference with it. In many cases interfering with property is also a crime. Since the real purpose of property rules is to prevent conflict and protect the peaceful uses of property, they should make it as clear as possible who owns what and what will happen to law-breakers.

Who makes property rules in the United States?

Property law is generally a local matter. The legislatures of each of our states, territories, Indian tribes, and many of our cities make property law. Often the courts must fill in gaps left in legislation by referring to local customs and practice: this is the "common law." Property law is a part of the unique lifestyle that each political subdivision makes for itself. Naturally, circumstances arise where the property laws of two neighboring communities come into conflict. Some users of a stream may live in one state, others in another state. Or, the smoke from a factory in one state may blow over onto a farmer's field in another state. In all these cases the dispute must be settled by our national, federal courts under federal law.

Are all things of value owned by someone?

Some things are owned by individuals, others by groups, organizations, corporations, and even governments. Many things of value have no identifiable owners and are called "common goods." Some things are common goods because there is simply no practical way to divide them up among people. The air we breathe is an example of this. Other things are common goods by the operation of law. We allow everyone to take as much as they want until the common good is used up. The problem with common goods is that no one has any incentive to conserve or improve them. Anything not consumed by one person will simply be taken and consumed by another. Fish and game are examples of this problem.

III. THE FISHING RIGHTS CONTROVERSY

.....1. Property

Goals:

The student:

1. knows that property is a product of law.
2. knows that property law is largely a local government prerogative.
3. is able to differentiate between private property and "common good."

Vocabulary:

common law
injunction
incentive

Debriefing questions:

1. What are some things that are clearly your property?
2. How do you know it is yours?
3. Who makes the rules governing that property?
4. If there is a violation of the rules who protects your rights?
5. Name some things that are public property?
6. Who makes the rules governing that property?
7. Who makes property law in the U.S.?
8. If there were no property laws, who would end up with all things of value in the world?
9. If vegetable growing in the ground were made common goods by the operation of law, would anyone grow vegetables?
10. To illustrate common goods, place a pile of M & M's on a table or desk in the front of the room. These represent common goods.

    The rules: Each student is free to eat as many as they want but they cannot hoard. They must be eaten immediately. When they are gone they are gone.

    Purpose: To determine how long the resource will last recognizing that there is no incentive to conserve. If the M & M's were divided equally with students and they were free to save, to trade, or eat them at their discretion this would represent private property.

III-THE FISHING RIGHTS CONTROVERSY

..... 2. THE NORTHWEST SALMON FISHING INDUSTRY

The salmon, and other fisheries in Puget sound, and in the Columbia, are very profitable. A grand future awaits the citizens of Oregon and Washington.

A Handbook of the United States and Emigrant's Guide (1885)

Anadromous fish

The most valuable commercial fish in Washington waters are "anadromous." This means they live and feed in the sea but return to fresh water to spawn. Salmon reach full size scattered throughout the coastal waters of the west coast of North America. When they reach maturity they begin to migrate towards their rivers and streams of origin. Once in fresh water they stop feeding and live off of stored fat until, having spawned, they die. Each race of salmon returns to the same location on the same stream at the same time each year. A minimum number of spawning fish or "minimum escapement" is necessary to perpetuate each run.

How has salmon fishing changed?

In the nineteenth century Indian tribes harvested most of their salmon in freshwater nets and traps. They waited for the fish to come to them and managed each stream independently. Non-Indian fishermen originally imitated tribal traps, building larger and stronger ones. Trap fishermen did well financially and were able to pay off the cost of their gear in two or three seasons. After 1900, however, three new kinds of gear were developed which could intercept salmon before they reached the traps. Gill nets are drawn across the path of the fish, which get caught in the mesh by their gills trying to get through. A purse seine is like a huge drawstring bag stretching around a school of fish and enclosing them. In deeper waters fishermen began trolling--dragging hooked lines through the water. It cost more to catch salmon with gillnets, purse seines and trolled lines than with traps, but once these new kinds of gear were put to use their ability to intercept salmon first out at sea put the trap fishermen out of business.

How do we regulate commercial fishermen?

In 1935 Initiative 77 banned all trapfishing and increased the powers and duties of the Department of Fisheries. Until 1974 no limit was placed on the number of people who could fish, but to prevent overfishing salmon to extinction the Department began the practice of limiting the times and places of fishing, and putting restrictions on the size and efficiency of each fisherman's gear. The severest restrictions have always been on the most efficient gear--purse seines. This way, although the number of fishermen more than tripled, the salmon have survived. Of course at the same time the number of salmon caught by each fisherman has decreased.

How do we regulate sport fishermen?

For forty years or more there have been more sport fishermen than commercial fishermen, and their number has been growing constantly. There are today nearly a hundred sportsmen for every commercial fisherman, and as a group sportsmen take about one out of every six salmon in state waters. Like commercial fishermen, sportsmen must pay a fee to fish, but there is still no limitation on the number of licenses. To prevent overfishing, sportsmen are subject to a limited fishing season, a "bag limit", and limits on the size of fish they may catch and keep.

III. THE FISHING RIGHTS CONTROVERSY

.....2. The Northwest Salmon Industry

Goals:

The student:

1. is able to define anadromous fish.
2. is able to distinguish among the several types of salmon fishing gear.
3. knows that the critical issue in the fishing controversy is the preservation of the many salmon runs.

Vocabulary:

minimum escapement
perpetuate
initiative

Debriefing questions:

1. Have the students research the particular species(s) that spawn in streams near their community.
2. Consider inviting a commercial, sports, or Indian fisherman to speak to the class.
3. Have students research what is involved in getting a commercial fishing license. Sports license.
4. Should the government limit the number of commercial fishing licenses? Explain.
5. If the number is to be limited what "criteria" would you use to determine who would get a license and who would not?
6. Should there be a limit on how many fish a commercial fisherman could catch in a season? Explain.
7. If you would limit the catch, how would you enforce it?
8. What might be some of the problems in limiting the types of gear that fisherman use?
9. What are the pros and cons of "trap" fishing? (This might make a good research project).
10. What suggestions would you make for salmon fishing policy makers to improve the present preservation problem?

..... 3. INDIAN FISHING

In pretreaty times Indian settlements were widely dispersed throughout Western Washington. There was considerable local diversity in the availability and importance of specific animal, plant and mineral resources used for food and artifacts. But one common cultural characteristic among all of these Indians was the almost universal and generally paramount dependence upon the products of an aquatic economy, especially anadromous fish, to maintain the Indian way of life.

U.S. v. Washington (1974)

What do Indian treaties say about fishing?

The nine treaties signed in 1854-1855 with the Indian tribes of Washington and Oregon all promise to protect the tribes' "right of taking fish at all usual and accustomed grounds and stations...in common with all citizens of the United States," or similar words to that effect. Exactly what was intended is unclear. Transcripts of the treaty negotiations shed no light on this question. Tribes must have thought this was a valuable right, since it was almost all they received in return for millions of acres of land. When they signed these treaties, Washington tribes had no competitors for the salmon in these waters.

How has Indian fishing changed since the treaties were made?

Although Indians fished with many kinds of nets, hooks and harpoons on the open seas most Indian salmon fishing was by traps, nets and weirs anchored in the rivers. Non-Indians built larger traps in deeper water, or intercepted salmon from boats, before they reached Indian traps. Nor could Indians borrow money to buy the kinds of traps, boats and gear non-Indians had. Although Initiative 77 did not apply to Indian fishermen, many Indian traps were demolished in the 1930's. By 1940, the Indian share of the statewide salmon harvest was only about 6%. Over the years federal and private credit gradually became available to Indian fishermen, and as they began to buy boats and compete with non-Indians using the same kinds of gear, their share of the statewide harvest rose (by 1970) to almost 15%-- about proportional to the ratio of Indian to non-Indian fishermen.

How did the case of *U.S. v. Washington* affect Indian salmon fishing?

U.S. v. Washington began as a challenge by members of the Nisqually and Muckleshoot tribes to the state's general licensing, area and season regulations. In 1974 the federal court interpreted the treaties to assure tribes an opportunity to harvest up to 50% of the harvestable salmon returning to their "usual and accustomed" fishing places, as well as a reasonable number of salmon for subsistence and ceremonial use. Since tribal members owned relatively little modern gear this goal could only be accomplished, the court concluded, by requiring the state to give tribal fishermen a longer season than other fishermen. Tribes are to be completely "self-regulating" on their own reservations and, in some cases, off-reservation as well. The federal district court continues to serve as the ultimate arbiter of disputes between tribal and state regulatory agencies. As a result of the court's ruling some tribes now come close to enjoying 50% of the salmon in their waters, but statewide the Indian share is probably not more than 25%.

Has *U.S. v. Washington* affected other kinds of fishing?

Both Indians and non-Indians trapped and sold steelhead trout until state law prohibited all commercial harvesting of this species in 1926. Years of environmental damage to streams have made the survival of steelhead largely dependent on fish hatcheries; by way of comparison, hatcheries support only about one-fifth of the salmon population. The federal district court in *U.S. v. Washington* held that tribal fishermen are entitled to net up to 50% of the steelhead for resale, but the United States Supreme Court has since limited this to the remaining natural runs.

III. THE FISHING RIGHTS CONTROVERSY

.....3. Indian Fishing

Goals:

The student:

1. is able to explain the treaty language pertaining to Indian fishing rights.
2. is able to explain why the Indian share of salmon declined after the treaties were signed.
3. is able to explain how the U.S. vs Washington decision attempted to increase the Indians share of salmon.

Vocabulary:

arbiter
natural runs
usual and accustomed grounds

Debriefing questions:

1. How would you interpret the treaty phrase... "in common with all citizens of the United States?"
2. How could you find out what the treaty participants intended it to mean?
3. Trace out on a map of Washington the area involved in the Medicine Creek Treaty. How much do you think it was/is worth?
4. How much was/is the Indian treaty settlement worth to them?
5. Does the definition of "in common" influence the value in question four? Explain.
6. What are some of the reasons for the decline in the Indian share of salmon harvest?
7. What are some ways the Indian share might have been increased?
8. Which of these ways did the federal court choose to resolve the problem?
9. How does the court decision impact the regulation of the salmon fishing industry?

..... 4. THE FUTURE OF NORTHWEST FISHING

The work of a judge is in one sense enduring and in another sense ephemeral. What is good in it endures. What is erroneous is pretty sure to perish. The good remains the foundations on which new structures will be built. The bad will be rejected and cast off in the laboratory of the years.

Justice Benjamin Cardozo's The Nature of the Judicial Process (1921)

Will future court action expand *U.S. v. Washington?*

Northwest Indian treaties cover all kinds of fishing, shellfishing, whaling and sealing. Future litigation is inevitable, particularly over herring, smelts and clams. An even more significant issue that remains open is the state's and United States' liability to tribes for the widespread environmental damage that has reduced all stocks of anadromous fish and shellfish far below their pre-treaty levels. If treaties gave tribes a property right in the fishery, these reductions in fish populations may have constituted a taking of property subject to the Fifth Amendment's requirement of compensation.

What does the future hold for the Northwest fishery?

Fishermen's incomes continue to fall. Environmental damage to spawning grounds and foreign fishing outside of our territorial waters continue to pose a much larger threat to the Northwest fish harvest each year than changes brought about by treaty rights litigation. In 1900 fishing was this state's third largest industry. Today it accounts for less than 1% of the state's economic output. The fishing industry's former economic significance might be regained through rebuilding and supplementing natural spawning grounds, more efficient fish harvesting technology, and better and simpler overall management. If current trends continue, however, the fishery may soon cost more to manage than the value of the fish caught.

What can the federal government do?

The federal government can help Northwest fishing by negotiating a reduction in foreign fishing of Northwest salmon and by helping to finance the restoration of salmon runs. The 1976 Fisheries Management and Conservation Act extends the power of the federal government to control fishing 200 miles out to sea. It has been widely suggested that the federal government could also abrogate the Indian treaties under which tribal members now fish. If this could be done it would probably have to be compensated and the effect on other fishermen's incomes would be small.

What can the state and tribes do?

In the final analysis the future of the Northwest fishery lies in the hands of the state and the tribes. Everyone benefits from an improvement in the economic value of the fishery. The problem is to arrive at an agreement to manage the fishery in the best possible way. This may only happen if state and tribal citizens begin to see the real problem as one of increasing the total value of the fishery, rather than disputing the distribution of its current, reduced and still-declining value.

III. THE FISHING RIGHTS CONTROVERSY

.....4. The Future of Northwest Fishing

Goals:

The student:

1. **knows that Indian fishing rights under U.S. vs Washington may be extended to other species of fish and shellfish.**
2. **is able to explain why the value of the commercial fishing industry in Washington is declining.**
3. **is able to explain how the federal, state, and tribal governments might increase that value in the future.**

Vocabulary:

litigation

Debriefing questions:

1. **What are some other kinds commercial fishing in the State of Washington?**
2. **What are some other "ecological factors" that might be endangering the fishing industry?**
3. **How would you change those factors to enhance commercial fishing?**
4. **What would be the social and economic trade-offs of making those changes?**

BASIC KNOWLEDGE EXPECTATIONS

9. Why must Indian tribes be compensated for changes in their treaties?

10. How are tribes similar to states?

11. Who generally makes property laws? Why?

12. How and why do we regulate salmon fishing?

13. How did U.S. V. Washington change Indian and non-Indian salmon fishing in Washington?

THE CONSTITUTION OF THE UNITED STATES

Article I.

Section 8. The Congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the Supreme Court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies: but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and and navel forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. And,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department of officer thereof.

THE TREATY OF PARIS
1783
Between the United States and Great Britain

Article I. His Britannick Majesty acknowledges the said United States viz. New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be Free, Sovereign, and Independent States; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof.

II. And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are, and shall be, their boundaries, viz. From the north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north, from the source of Saint Croix river to the Highlands, along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the north-westernmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude, from thence by a line due west on said latitude until it strikes the river Iroquois or Cataraquy; thence along the middle of the said river into lake Ontario; through the middle of said lake, until it strikes the communication by water between that lake and lake Erie; thence a-ong the middle of said communication into lake Erie; through the middle of said lake until it arrives at the water communication between that lake and lake Huron; thence along the middle of said water communication into the lake Huron; thence through the middle of said lake to the water communication between that lake and lake Superior; thence through lake Superior, northward of the isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude:--South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint river; thence straight to the head of St. Mary's river, and thence down along the middle of St. Mary's river to the Atlantic ocean: --East, by a line to be drawn along the middle of the river St. Croix from its mouth in the bay of Fundy to its source; and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence: comprehend- all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy, and the Atlantic ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

III. It is agreed, that the people of the United States shall continue to enjoy unmolested, the right to take fish of every kind on the grand bank and on all the other banks of Newfoundland: also in the gulph of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island) and also on the coasts, bays, and creeks of all other of his Britannick Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

IV. It is agreed, that creditors on either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts heretofore contracted.

V. It is agreed, that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights, and properties, which have been confiscated belonging to real British subjects: and also of the estates, rights, and properties of persons resident in districts in the possession of his Majesty's arms, and who have not borne arms against the said United States: and that persons of any other description shall have free liberty to go to any part or parts of any of the Thirteen United States, and therein to remain twelve months unmolested in their endeavors to obtain the restitution of such of their estates, rights, and properties, as may have been confiscated: and that Congre-s shall also earnestly recommend to the several states, a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity, but with that spirit of consiliation which, on the return of the blessings of peace, should universally prevail. And that Congress shall also earnestly recommend to the several states, that the estates, rights, and properties, of such last-mentioned persons shall be restored to them, they refunding to any persons who may be now in possession the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties, since the confiscation.

And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

VI. That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons, for or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage either in his person, liberty, or property; and that those who may be in confinement on such charges at the time of the ratification of the tready in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

VII. There shall be a firm and perpetual peace between his Britannick Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore, all hostilities, both by sea and land, shall from henceforth cease: all prisoners on both sides shall be set at liberty, and his Britannick Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes, or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets, from the said United States, and from every port, place and harbour within the same; leaving in all fortifications the American artillery that may be therein: and shall also order and cause all archives, records, deeds, and papers, belonging to any of the said States, or their citizens, which in the course of the war may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper states and persons to whom they belong.

VIII. The navigation of the river Mississippi, from its source to the ocean, shall for ever remain free and open to the subjects of Great Britain, and the citizens of the United States.

IX. In case it should so happen, that any place or territory belonging to Great Britain, or to the United States, should have been conquered by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation.

X. The solumn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties in the space of six months, or sooner if possible, to be computed from the day of the signature of the present treaty.

TREATY OF MEDICINE CREEK - 1854

Between the United States and the Nisqually, Puyallup, Steilacoom, Squaxin, Samamish, Stehchass, T'Peeksin, Squiatl, and Sahehwamish Tribes

Article 1. The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States, all their right, title, and interest in and to the lands and country occupied by them bounded and described as follows, to wit: Commencing at the point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence southerly, along the summit of said range, to a point opposite the main source of the Skookum Chuck Creek; thence to and down said creek, to the coal mine; thence northwesternly, to the summit of the Black Hills; thence northerly, to the upper forks of the Satsop River; thence northeasternly, through the portage known as Wilkes's Portage, to the Point Southworth, on the western side of Admiralty Inlet; thence around the foot of Vashon's Island, easterly and southeasternly, to the place of beginning.

Article 2. Thereis, however, reserved for the present use and occupation of the said tribes and bands, the following tracts of land, viz: The small island called Klah-che-min, situated opposite the mouths of Hammersley's and Totten's Inlets, and separated from Hartstene Island by Peale's Passage, containing about two sections of land by estimation; a square tract containing two sections, or twelve hundred and eighty acres, on Puget's Sound, near the mouth of the She-nah-nam Creek, one mile west of the meridian line of the United States land survey, and a square tract containing two sections, or twelve hundred and eighty acres, lying on the south side of Commencement Bay; all which tracts shall be set apart, and, so far as necessary, surveyed and marked out for thier exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the superintendent or agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them. In the mean time, it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner of Claimant. If necessary for the public convenience, roads may be run through their reserves, and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them.

Article 3. The right of taking fish, at all usual accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands: Provided, however, that they shall not take shellfish from and beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the latter.

Article 4. In consideration of the above session, the United States agree to pay to the said tribes and bands the sum of thirty-two thousand five hundred dollars, in the following manner, that is to say: For the first year after the ratification hereof, three thousand two hundred and fifty dollars; for the next two years, three thousand dollars each year; for the next three years, two thousand dollars each year; for the next four years, fifteen hundred dollars each year; and for the next five years, one thousand dollars; all which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may form time to

time determine, at his descretion, upon what beneficial objects to expend the same. And the superintendent of Indain affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in repect thereto.

Article 5. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of three thousand two hundred and fifty dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.

Article 6. The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on renumerating them for their improvements and the expenses of their removal, or may consolidate them with other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment be made accordingly therefore.

Article 7. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

Article 8. The aforesaid tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defense, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this article, in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Article 9. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same; and therefore it is provided, that any Indian belonging to said tribes, who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Article 10. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support, for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands, in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and capenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer for the term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said central agency,

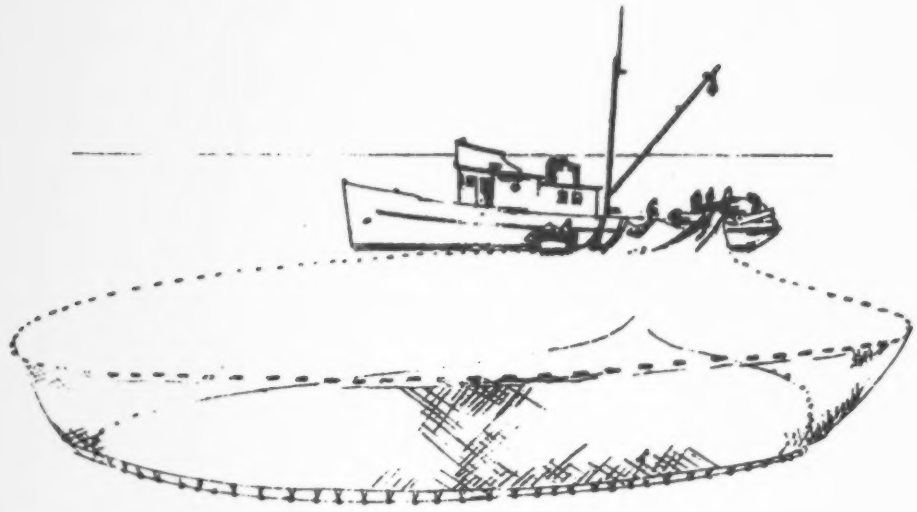
who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and meical aitendance, to be defrayed by the United States, and not deducted from the annuities.

Article 11. The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

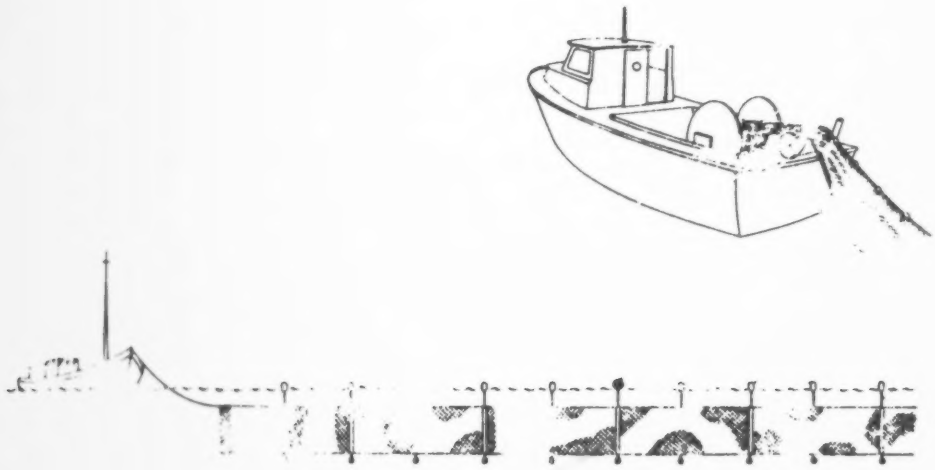
Article 12. The said tribes and bands finally agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

Article 13. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

SALMON FISHING GEAR IN PUGET SOUND

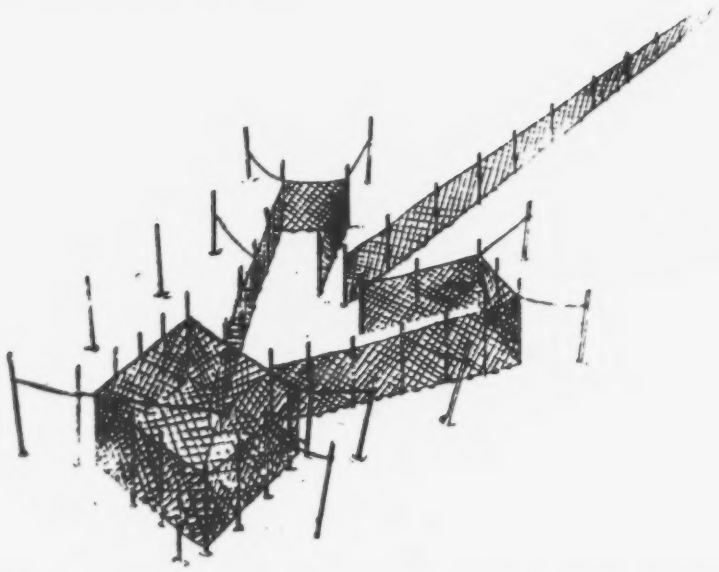


PURSE SEINE. In this illustration the seine has been set to enclose a school of fish and is ready to be "pursed" and hauled in.

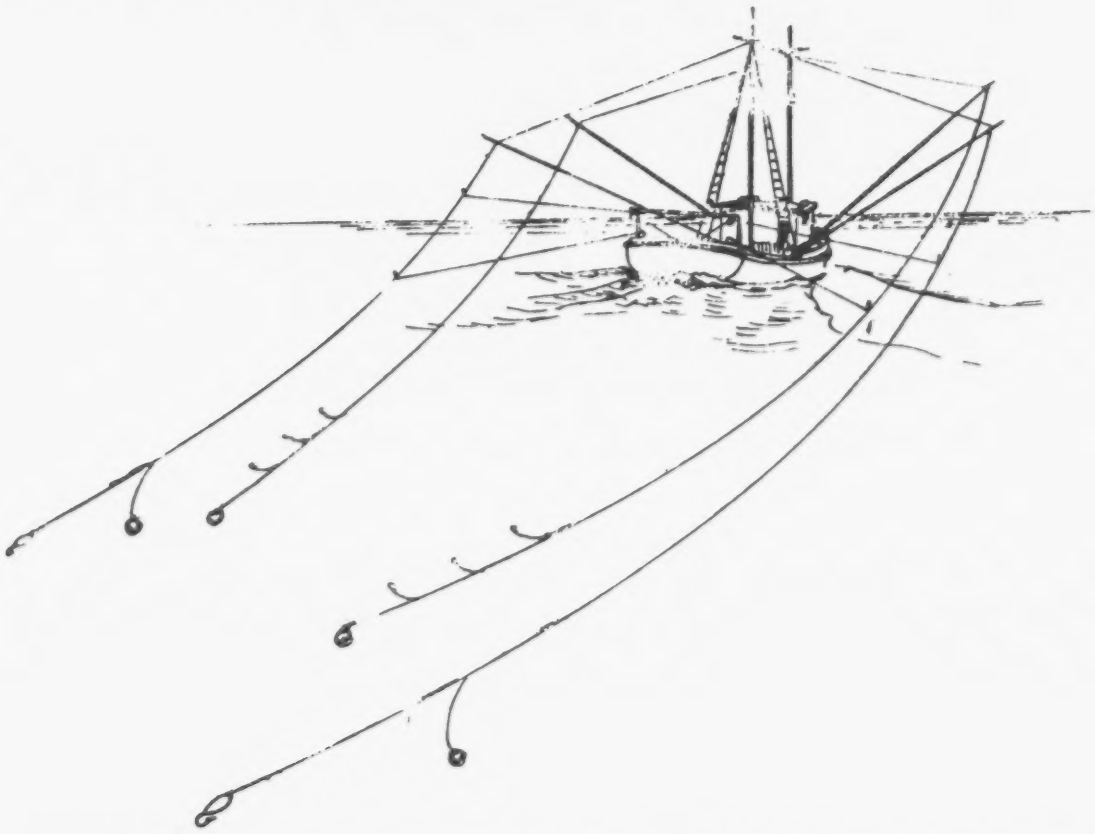


GILLNET (Driftnet). The net consists of a battery of floating panels cutting across the path of the fish, and anchored to the boat at the leeward end.

Illustrations from: C. Nedelec (editor), FAO Catalogue of Small Scale Fishing Gear (United Nations/Fishing News (Books) Ltd., Surrey 1975) pages 123, 125; Carvel Hall Blair and Willits Dyer Ansel, A Guide to Fishing Boats and their Gear (Cornell Maritime Press, Cambridge Maryland 1968) pages 9, 53; and Maurice E. Stansby (editor), Industrial Fishery Technology (Reinhold Publishing, New York 1963) page 46.



TRAP. This is a Puget-Sound-type "single heart" trap anchored by poles and designed to lead migrating salmon into its enclosure.



TROLLER. Trolling vessels are easily identified by their outriggers. From each outrigger drops a "trolled line" bearing baited hooks or lures and a heavy sinker.

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